IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3417 OF 2007
Date of Decision:13.07.2007

Jag Bhushan Kapil ....Petitioner

versus

Vandana Kapil Singh & another ....Respondents

Before: Hon'ble Mr. Justice R.S. Madan

Present: J.S. Chahal, Advocate for the petitioner.

R.S. Madan (J)

This civil revision petition is directed against the order dated 27.04.2007 passed by Sh. Virender Singh, District Judge, Yamunanagar whereby he modified the order of injunction under challenge before him and dismissed the appeal leaving the parties to bear their own costs.

On the application filed by Smt. Vandana Kapil respondent/plaintiff under order 39 Rule 1 & 2 seeking to injunct the petitioner/defendant from interfering in her possession over one kitchen and latrine and a court yard which is a part of House No.49, situated at Thapar Colony, Yamunanagar was modified in appeal and qua the prayer the appeal was dismissed.

It is the case of the respondent that she is a legally wedded wife of Jag Bhushan Kapil. She married to him in the year 1997. The life partners fell apart after the wife found her husband indulging in the sexual act with the maid employed by them. They are living separately from that fateful day of August 7, 2006. On account of the strained relations between the husband and his wife she moved to the Civil Court to protect her right of residence in her nuptial home. The claim of the respondent/plaintiff found favour with the learned Trial Court who allowed the application for injunction.

Aggrieved by the order of injunction Jag Bhushan Kapil and his brother Shashi Bhushan Kapil preferred the Civil Miscellaneous Appeal No.235 of 2006 before the Court of District Judge, Jamunanagar. Some of the facts are admitted which does not require any adjudication. It is admitted that the plaintiff/respondent is legally wedded wife of appellant Jag Bhushan Kapil and that the couple is occupying separate portions in House No.49, Thapar Colony, Yamuna Nagar. The wife is in exclusive possession of the portion consisting of one room with attached kitchen and a latrine. A separate room is under the eclusive use and occupati9on of her husband. It is also admitted fact appellant Shashi Bhushan Kapil is the brother of appellant Jag Bhushan Kapil but he has no right, title or interest in this property as he is residing separately with his own family in a separate house.

The learned District Judge made an arrangement with respect to the room located adjacent to the main gate of House NO.49 and measures 10 feet X 11 feet that the room shall be used by the couple in such manner that the wife shall have the right to use it for teaching students from 5.00 pm to 7.30 pm everyday whereas the husband shall have the right to use it for his own benefit and comfort during the remaining period of the day. The learned District Judge modified the order of injunction to the effect that appellant No.1 may create third party interest in the property to the extent of one-half share only leaving the share of his wife untouched during the pendency of the suit and thereby passed an order that the room measuring 10 feet X 11 feet adjacent to the main gate of the house shall be used by the couple in the manner that the wife shall have the right to use it for teaching students from 5.00 pm to 7.30 pm everyday whereas the husband shall have the right to use it for his own benefit and comfort during the remaining period of the day. It was also ordered that appellant No.1 will have a right to create third party interest in

the property to the extent of one-half share only leaving the share of his wife untouched during the pendency of the suit. It was this modified order of the District Judge which is under challenge before this Court.

Heard.

I have perused the impugned order under challenge before this Court and found that the leanred District Judge has passed a very reasonable order by keeping in view the interest of both the parties being a couple case. It is not disputed that the wife has a right to live in the house of her husband and she cannot be denied this right by issuance of injunction against her.

Thus keeping in view the facts and circumstances of the case, no ground is made out to interfere in the order passed by the learned District Judge, Jamunanagar.

Resultantly, this revision petition is dismissed.

(R.S. Madan)
Judge

13.07.2007
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